THE LAW SCHOOL.

LECTURE NOTES.

[These notes were taken by students from lectures delivered as part of the regular course of instruction in the School. They represent, therefore, no carefully formulated statements of doctrine, but only such informal expressions of opinion as are usually put forward in the class-room. For the form of these notes the lecturers are not responsible.]

WILLS — INCORPORATION BY REFERENCE. — (*From Prof. Gray's Lectures.*) — To incorporate in a will a document which is not duly attested, the latter must be so described in the will as to be capable of identification. This identification, as is pointed out in *Allen* v. *Maddock*,[1] will always be to some extent a question of parol evidence; but the document must be referred to as one then existing; if there is not such a reference, it is immaterial that there is already in existence a paper which satisfies the description. This latter point is illustrated by *Goods of Sunderland*,[2] where the words of the will, according to the construction put upon them by the court, were never meant to describe the particular paper previously executed, but were ambulatory, and intended to cover any paper which the testator might make in the future. *Goods of Truro*[3] raised the further question, how far the republication of the will by a later valid codicil might have the effect of adding to the will something which was not a part of it when executed, and which was not mentioned in the codicil; *e.g.*, a memorandum referred to in the will, but not prepared till after its execution. Sir J. P. Wilde (Lord Penzance) held that a codicil might have this effect. The will, he said, was to be read as if the testator had sat down and reëxecuted it at the time of making the codicil; and if there were in it any words which, speaking from the date of the codicil, would contain a sufficient reference to a document as then existing to incorporate it within the principle of *Allen* v. *Maddock*, that document might be treated as part of the will.

The test thus laid down seems open to some criticism. These cases of incorporation by reference present two difficulties which should not be confounded. (1.) The words of the will may be ambulatory, as in *Goods of Sunderland*, above. This difficulty is apparently a fatal obstacle in the way of incorporating any paper, though it falls within the description; for it is impossible to show any reference in the will to that particular document. (2.) The paper, though specifically described, — *e.g.*, "the letter which I mean to write to-morrow," — may not be in existence when the will is made, and therefore be invalid as a testamentary instrument, for lack of due execution. This objection seems to be removed, however, by a good codicil made after the preparation of the memorandum; for the codicil is properly executed, and the will, republished by the codicil, contains a sufficient reference to this memorandum, which may therefore be treated as a valid testamentary disposition. The test of *Goods of Truro* would seem, however, if strictly applied, to lead to a contrary result in the case just put; for the words of the will, treated as if re-executed at the date of the codicil, will still be found to refer to the

[1] 11 Moo. P. C. 427; 4 Gray's Cas. Prop. 198.
[2] L. R. 1 P. & D 198; 4 Gray's Cas. Prop. 217.
[3] L. R. 1 P. & D. 201; 4 Gray's Cas. Prop. 219.

future, and not to any document as existing. And for this reason, that the language of the will was of a future character, Sir J. P. Wilde refused, in *Goods of Mary Reid*,[1] to give effect to a paper prepared after the will, though it was apparently sufficiently described in the will and was followed by a good codicil. But in most cases the rule of *Goods of Truro* would probably lead to the same result as the test here suggested.

RECENT CASES.

[These cases are selected from the current English and American decisions not yet regularly reported, for the purpose of giving the latest and most progressive work of the courts. No pains are spared in selecting *all* the cases, comparatively few in number, which disclose the general progress and tendencies of the law. When such cases are particularly suggestive, comments and references are added, if practicable.]

AGENCY — IMPLIED POWER — EXTRINSIC FACT. — Where an agent has authority to borrow money on exceptional terms in cases of emergency, the lender is not bound to inquire whether the emergency has actually arisen; but if he acted in good faith and without notice that the agent has exceeded his authority, he can recover from the principal. *Montaignac* v. *Shitta*, 15 App. Cas. 357 (Eng.).

The principle of this case would seem to be that where the agent is empowered to act on the existence of an extrinsic fact the principal is bound by the agent's representation as to the existence of that fact when it is peculiarly within the agent's knowledge. If so the case would be contrary to *Grant* v. *Norway*, 10 C. B. 665, and in accord with *N. Y. & N. H. R. R. v. Schuyler*, 34 N. Y. 30.

BILLS AND NOTES — PAROL EVIDENCE. — Parol evidence is admissible to show that a demand promissory note made by a daughter to her father was in fact executed under an agreement that it should never be enforced, but should serve as a mere memorandum of an advancement. *Brook* v. *Latimer*, 24 Pac. Rep. 946 (Kan.).

CONSPIRACY — MALICE. — An action will lie for a combination or conspiracy to drive a trader out of business by fraudulent and malicious acts. The gravamen of a civil action is malice, conspiracy being matter of inducement only. *Van Horn* v. *Van Horn et. al.*, 20 Atl. Rep. 485 (N. J.).

Mogul Steamship Co. v. *McGregor*, 23 Q. B. D. 598, was cited and approved.

CONSTITUTIONAL LAW — EQUAL PROTECTION. — The allowance of the right of appeal to citizens of the State at large in all cases of conviction of crimes before a justice of the peace, and a denial of such right to citizens of Detroit, convicted of similar offences in the police court of that city, where the sentence imposed does not exceed twenty days imprisonment or a $25 fine, does not deprive citizens of Detroit of the equal protection of the laws guaranteed to all citizens of the United States by the Constitution, Amendment 14, § 1, as the act providing for appeals from the police court of Detroit operates equally on all persons within its jurisdiction. *Sullivan* v. *Hang*, 46 N. W. Rep. 795 (Mich.).

CONSTITUTIONAL LAW — POLICE POWER — INTOXICATING LIQUORS. — A San Francisco ordinance provided that one seeking a liquor-dealer's license must first obtain the written consent of a majority of the police commissioners, and in case of a refusal in the first instance, such consent was to be given upon the written recommendation of not less than twelve citizens owning real estate in the block in which the business was to be carried on. *Held*, the ordinance was constitutional. *Crowley* v. *Christensen*, 11 Sup. Ct. Rep. 13. See note on this case *supra*, p. 236.

CONTRACTS — INTERPRETATION — CHARTER-PARTY. — By the charter-party the charterer contracted to pay demurrage for delays over and above the lay-days allowed, and the owner agreed to render all customary assistance in unloading. The lay-days were exceeded on account of a strike by the dock laborers employed

[1] 38 L.J. N. S. (P. & M.) 1; 4 Gray's Cas. Prop. 223.